

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9048 OF 2007

Jagneevan Narayan Shetty .. Petitioner
Versus
Mrs.Hemlata Vijay Shetty .. Respondent
Mr.S.S.Kanetkar for petitioner

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th December 2007

P.C.

. Application for amendment made by the petitioner in the lower appellate court, to amend his written statement, being rejected this petition has been preferred.

2. The claim proceeds on the basis that the petitioner is licensee in respect of the premises where hotel business is conducted by the respondent. The respondent inducted him for the

purpose of carrying on business but since the petitioner refused to vacate after the period specified in the agreement in that behalf, the suit came to be instituted for his eviction and possession.

3. During the pendency of the suit and upon writ of summons being served the written statement was filed by the petitioner defendant. Mr.Kanetkar would submit that perusal of that written statement would show that the essential pleading viz., that the status of the petitioner in respect of the premises is not that of a licensee but a tenant has not been included and this is because of the mistake committed by the pleader/Advocate engaged by the petitioner. It is relying upon the absence of such a plea and accepting the version of the respondent plaintiff that the suit came to be decreed by the trial court.

4. He submits that in the pending appeal all that he requested was that the written statement be allowed to be amended to incorporate the plea that the status of the petitioner in respect of subject premises is not that of a licensee but that of a tenant. He submits that such a plea would not entail any further proceedings including leading of oral and documentary evidence. This is only to take care of a technical plea which has found favour with the trial court. In such circumstances and when the amendment is to the written statement, there is no question of any inconsistent pleas being raised nor any cause of action being altered. The amendment could have been allowed.

4. Learned Advocate appearing for respondent plaintiff however submits that the amendment is rightly rejected. He has taken me through the deposition of the petitioner defendant in the trial court and the version in the written

statement which was before the trial court. He submits that consistent with all this the findings have been rendered and now permitting the petitioner to amend the written statement would mean that vital admissions in the depositions are adversely affected.

6. To my mind, the petitioner can be sufficiently protected by allowing him to raise a plea before the lower appellate court that from the material placed on record and available documents, it can safely be concluded that the agreement in question is not that of a pure licence but confers the status of tenant. This plea can be urged on the basis of the documents produced on record and their contents. The petitioner can very well place his interpretation and version on record with regard to its contents and in my view, merely because, there is no pleading, does not mean that he cannot raise this plea before the lower appellate court.

7. Respondent plaintiff would not object to the plea being raised of this nature before the lower appellate court. He opposed any amendment to the written statement at this stage and in my opinion, rightly so. In such circumstances, the petition is disposed of by permitting petitioner to raise above plea during the course of his argument before the lower appellate court and the lower appellate court shall consider the same in accordance with law.

8. Equally, it would be open for the petitioner to urge before the lower appellate court that for such a plea to be raised and considered, it was not necessary for him to incorporate a specific plea in the written statement. He can urge that in the peculiar facts of this case, the plea can be raised on the basis of the documents already placed on record. Equally, while supporting the judgement of the

trial court, the respondent plaintiff can also urge that for such a plea to be raised, it is essential that the foundation is laid somewhere in the pleadings. All such pleas are open for being urged by the lower appellate court in accordance with law and merely because the application for amendment is rejected does not mean that the petitioner is precluded from raising them. In the peculiar facts of this case, granting such liberty would sub-serve the ends of justice. Petition disposed of accordingly.

9. Needless to state that if the lower appellate court is unable to adhere to the time schedule fixed by this Court for disposal of the appeal, it shall endeavour and dispose of the same within the extended period, which is extended accordingly by four weeks from the date of appearance of parties before the lower appellate Court.

(S.C.Dharmadhikari, J)